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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1995/85

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Introduction

1. At its fiftieth session, the Commission on Human Rights, in its resolution 1994/45 of 4 March 1994, decided to appoint, for a three-year-period, a special rapporteur on violence against women, its causes and consequences, to report to the Commission on an annual basis. Ms. Radhika Coomaraswamy (Sri Lanka) was subsequently appointed as Special Rapporteur.

2. The Commission on Human Rights, at its fifty-first session, in its resolution 1995/85 of 8 March 1995 entitled "The elimination of violence against women", welcomed the preliminary report of the Special Rapporteur (E/CN.4/1995/42).

3. The present report focuses on all forms of violence against women in the family. 1/ Chapter I outlines the working methods of the Special Rapporteur and reports on the activities undertaken by the Special Rapporteur in the exercise of her mandate since the fifty-first session of the Commission. Chapter II is an introduction to the problem of violence in the family. Chapter III examines domestic violence as a violation of international human rights law. Chapter IV addresses the question of domestic violence and other forms of violence against women in the family, based essentially on the analysis of information received by the Special Rapporteur in reply to a note verbale of 29 July 1994, sent to Governments, United Nations organs, bodies and specialized agencies, as well as non-governmental organizations and women's groups. In Chapter V, the Special Rapporteur lists existing national legislation on domestic violence. In chapter VI she analyses the legal mechanisms available in various countries in connection with which a framework for model legislation on domestic violence has been prepared (E/CN.4/1996/53/Add.2). Finally, chapter VII contains recommendations on ways and means to eliminate violence against women in the family, along with its causes, and to remedy its consequences.

I. WORKING METHODS AND ACTIVITIES

A. General

4. The Commission on Human Rights, in its resolution 1995/85, requested all Governments to cooperate with and assist the Special Rapporteur in the performance of the tasks and duties mandated, and in particular to respond to the Secretary-General's request of 29 July 1994 by providing all relevant information and data requested.

5. Thus far, only 44 States have replied. The Special Rapporteur is, however, pleased that, in addition to replies received for the preliminary report, the following Governments sent information to her: Australia, Austria, Barbados, Bulgaria, Canada, Congo, Croatia, Greece, Guatemala, Lesotho, Myanmar, Netherlands, Norway, Spain and Thailand.

6. Finally, the Special Rapporteur would like to draw the attention of the Commission to its resolution 1995/85 and to the Platform for Action adopted at the Fourth World Conference on Women, which request the Secretary-General to provide the Special Rapporteur with all necessary assistance, in particular

the staff and resources required to perform all mandated functions. In this context, the Special Rapporteur regrets the disruptions caused to her work by the uncertain working conditions of the staff assisting her at the Centre for Human Rights, despite her earlier representation to the Commission that continuing assistance with an acquired understanding of the subject is of vital importance to her mandate.

B. Communications with Governments

7. With a view to finding durable solutions for the problem of violence against women in all societies, the Special Rapporteur has established procedures to seek from Governments, in a humanitarian spirit, clarifications and information on specific cases of alleged violence in order to identify and investigate specific situations and allegations of violence against women in any country. Since the inception of her mandate, the Special Rapporteur has received some information on alleged instances of violence against women. However, it is noted that much of the information lacks sufficient detail to enable the Special Rapporteur to undertake appropriate action. The Special Rapporteur has, therefore, prepared a standard format for reporting on alleged cases of gender-based violence against women which is attached in Annex I to the present report.

8. The Special Rapporteur wishes to inform the Commission that she has transmitted two communications to the Government of the United Arab Emirates concerning the case of a 16-year-old Filipina migrant worker, Sarah Balabagan, who was reported to have stabbed her employer to death in self-defence after having been raped at knife-point by him. The first communication, dated 17 October 1995 following an urgent appeal transmitted by the Special Rapporteur on extrajudicial, summary and arbitrary executions, raised the concern of the Special Rapporteur over the allegation that Balabagan's original sentence of seven years' imprisonment had been overturned and replaced by the death penalty. In the Special Rapporteur's second communication, dated 16 November 1995 and sent in support of an urgent appeal transmitted by the Special Rapporteur on the question of torture, it was acknowledged that whilst the death sentence against Balabagan had been quashed, an appeals court in the United Arab Emirates sentenced Balabagan to one year's imprisonment and 100 lashes, in addition to a financial obligation.

9. In a communication dated 16 January 1996, the Government of the United Arab Emirates, in reply to the Special Rapporteur's letter of 16 November 1995, stated that it should be noted that the penalty of flogging is carried out only if it has been established, by way of a medical examination and under the supervision of all the competent medical and other authorities, that the accused person is physically capable of bearing it. It was further stated that the practice of flogging does not constitute violence practised by the State against women, since it is a legitimate penalty that is applied on the basis of legal and medical considerations. The Government of the United Arab Emirates, therefore, saw no justification for the Special Rapporteur's communication in view of the fact that the State had provided the accused with all the facilities needed to ensure a fair trial.

10. The Special Rapporteur is grateful for the opportunity for dialogue with the Government concerned and has taken due note of its reply. The Special

Rapporteur wishes, however, to clarify that it is not the act of corporal punishment per se that raises concern over violence against women, but the circumstances in which female migrant workers such as Balabagan are compelled to resort to their self-defence. The often illegal or undocumented status of women migrant workers renders them particularly vulnerable to abuse by their employers, whether by confiscating their passports and withholding their salaries or, as in Balabagan's case, violating their right to life and security of person by subjecting them to sexual harassment, abuse and rape. The Special Rapporteur, therefore, strongly urges all receiving countries to ensure that the human rights of all persons within their boundaries, and specifically those of women migrant workers, are protected in accordance with their obligations under international law.

C. Field visits

11. The Special Rapporteur wishes to draw the attention of the Commission to the report of her mission to the Democratic People's Republic of Korea, the Republic of Korea and Japan on the issue of military sexual slavery in wartime, carried out from 14 to 27 July 1995 (E/CN.4/1996/53/Add.1). The Special Rapporteur would like once more to express her appreciation for the cooperation of the Governments concerned during her visits.

12. In 1996-1997, the Special Rapporteur hopes to visit the regions of Latin America and the Caribbean, Eastern Europe, Western Europe and Africa on the issues of domestic violence, violence against women migrant workers, trafficking and forced prostitution and violence against refugee women. The reports of these missions will be presented to the Commission at its fifty-third session. In this context, the Special Rapporteur extends her gratitude to the Government of Brazil, at whose invitation she will visit Brazil in May 1996 on the issue of domestic violence.

D. Participation in conferences and meetings

13. In accordance with the Commission's requests for closer integration within the United Nations system of women's rights and human rights mechanisms, the Special Rapporteur actively participated in the preparatory process for the Fourth World Conference on Women and in the Conference itself.

14. During the Fourth World Conference on Women (Beijing, 4-15 September 1995), the Special Rapporteur convened, on 8 September 1995 in Beijing, in cooperation with the United Nations High Commissioner for Human Rights, a panel discussion on "Violence against women, its causes and consequences". Panellists included women's rights activists from Costa Rica, the United States of America and Zimbabwe, two experts of the Committee on the Elimination of Discrimination against Women, as well as the Special Rapporteur on the right to freedom of opinion and expression and representatives of the Office of the United Nations High Commissioner for Refugees and the United Nations Interregional Crime Prevention and Criminal Justice Institute. The interesting and thought-provoking discussions focused on specific forms of violence against women in different regions, as well as on a global strategy for the elimination of all forms of violence against women, its causes and consequences.

15. The Special Rapporteur also participated in a panel discussion organized by the Centre for Human Rights on the integration of women's rights into the human rights mechanism of the United Nations, entitled "From Vienna to Beijing".

16. In connection with the panel discussions, the High Commissioner for Human Rights and the Special Rapporteur received a petition with over 1.5 million signatures, calling for United Nations action and accountability to implement the equal status and human rights of women as recommended in the Vienna Declaration and Programme of Action.

17. The Special Rapporteur also participated in a panel discussion on "A Commitment to the World's Women" organized by the United Nations Development Fund for Women (UNIFEM), in a World Health Organization round table on "Women, Health and Violence", as well as in a journalists' encounter on violence against women.

18. The Special Rapporteur considers that relevant sections of the Beijing Declaration and Platform for Action, such as those on violence against women, women and armed conflict and human rights of women, demonstrate significant progress achieved at the international level towards the elimination of violence against women. Strategic objective D of the Platform, "Violence against women", adheres to the definition and scope of violence as contained in the United Nations Declaration on the Elimination of Violence against Women and, in some instances, even goes beyond it. For example, in addition to the various forms of violence against women already elaborated in the Declaration, the Platform makes specific reference to acts of violence such as forced sterilization and forced abortion, coercive/forced use of contraceptives, female infanticide and prenatal sex selection. Furthermore, the particular vulnerability to violence of, among others, women belonging to minority groups, indigenous women, refugee women, women migrants and women in detention is emphasized.

19. The analysis of the underlying causes and consequences of the Platform for Action is a clear manifestation of how far the international community has evolved in its attitudes towards violence against women since the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women held at Nairobi in 1985. The Special Rapporteur notes with satisfaction the much deeper understanding and openness that surrounds the diverse implications of violence against women manifest in the Platform, which stress that acts or threats of violence, whether occurring in private or in public life, instil fear and insecurity in women's lives and are obstacles to the achievement of equality, development and peace, resulting in high social, health and economic costs to the individual. Violence is recognized as one of the crucial social mechanisms by which women are forced into a subordinate position compared with men. It is realized that the lack of legal guarantees and safeguards and the lack of access to and information on these mechanisms and laws all reinforce women's vulnerability to violence. The Special Rapporteur supports the urgent request to carry out research and collect data, statistics and information relating to the prevalence of different forms of violence against women with a view to studying the causes and consequences of violence against women and the effectiveness of preventive measures.

20. The Special Rapporteur is particularly pleased that Governments at the Beijing Conference made a firm commitment to develop a holistic and multidisciplinary approach towards creating violence-free families, communities and States. In this regard, the Special Rapporteur looks forward with interest to the implementation of the strategies for action for the elimination of violence against women, including the promotion of an active and visible policy of mainstreaming a gender perspective in all policies and programmes relating to violence against women, the enactment and enforcement of legislation against perpetrators of practices and acts of violence against women, and the creation of institutional mechanisms for reporting incidents of violence.

21. In addition, the Special Rapporteur noted with satisfaction that the Conference called for strategies for action envisaged in the field of education and awareness-raising, such as the organization and funding of information campaigns and educational activities to sensitize girls and boys, women and men, to the personally and socially detrimental effects of violence in the family, the training of judicial, legal, medical, social, educational, police and immigrant personnel in order to avoid power abuse leading to violence against women, and the provision of counselling and rehabilitation programmes for perpetrators of violence, as well as community-based support services for women victims of violence.

II. DEFINITION OF VIOLENCE IN THE FAMILY

22. According to the myth of the family as a sanctuary of tranquillity and harmony, domestic violence is a veritable incongruity, a contradiction in terms. Violence shatters the peaceful image of the home, the safety that kinship provides. None the less, the insidious nature of domestic violence has been documented across nations and cultures worldwide. It is a universal phenomenon.

23. Domestic violence is violence that occurs within the private sphere, generally between individuals who are related through intimacy, blood or law. Despite the apparent neutrality of the term, domestic violence is nearly always a gender-specific crime, perpetrated by men against women. When the reverse occurs and women strike out against their male partners, such incidents barely influence statistics of the gender-specific nature of domestic violence. In any case, such incidents most often occur when women attempt to physically defend themselves against their abusive partners. According to the United States Justice Department, women are 11 times more likely to be victims of domestic violence than men. 2/

24. Domestic violence is often, albeit problematically, labelled "family violence", so that the actual structure of the family, whether defined as nuclear, joint or single-sex, becomes an important subject of investigation. Discussions on family violence have failed to include the broad range of women's experiences with violence perpetrated against them by their intimates when that violence falls outside the narrow confines of the traditional family. 3/ Therefore, it is important that in any definition of family violence there exists an accompanying conceptualization of the family. This, however, rarely occurs and negates the reality of those women whose experiences do not fall into traditional categories of family.

25. For the purposes of this report, family is defined broadly as the site of intimate personal relationship. A subjective definition, i.e. any unit where the individuals concerned feel they are a family, is more inclusive than an objective one and more relevant for the discussion of domestic violence. Rather than relying on the institutionalized definitions of family imputed by the State, notions of family should be reconceptualized around expressions of ideals of nurturance and care. There is a need to make room for "difference and plurality" within our understanding of what constitutes family. 4/

26. In addressing violence in the family, State-tolerated violence intended to control women in their so-called private lives has thus far not been accounted for. The rhetoric of public versus private and the consequent primacy afforded to the public realm has fundamentally affected perceptions of women's rights. In distinguishing certain forms of violence as domestic violence, definitions have arisen out of the original conceptualization of such violence as private acts within the family. However, an inflexible definition of domestic violence, focusing solely on private actors, legitimizes the public/private dichotomy. This construction has continually been challenged and critiqued by women's human rights activists, not least because it neglects a gender-specific dimension. Thus, the development of a comprehensive framework clearly depicting the relation between the nature of the violence perpetrated against women and their private personae is important in an effort to move beyond a private/public distinction in addressing violence.

27. At its most complex, domestic violence exists as a powerful tool of oppression. Violence against women in general, and domestic violence in particular, serve as essential components in societies which oppress women, since violence against women not only derives from but also sustains the dominant gender stereotypes and is used to control women in the one space traditionally dominated by women, the home.

28. In an effort to expose its various forms and dimensions, this report defines violence in the family as violence perpetrated in the domestic sphere which targets women because of their role within that sphere or as violence which is intended to impact, directly and negatively, on women within the domestic sphere. Such violence may be carried out by both private and public actors or agents. This conceptual framework intentionally departs from traditional definitions of domestic violence, which address violence perpetrated by intimates against intimates, or equates domestic violence with woman-battering. It is more in keeping with the United Nations Declaration on the Elimination of Violence Against Women which, in article 2, defines violence as encompassing, but not being limited to "physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation". 5/

III. DOMESTIC VIOLENCE AS A VIOLATION OF HUMAN RIGHTS

29. The Special Rapporteur, in her preliminary report, outlined in detail the international human rights standards with regard to violence against women. It, therefore, suffices to state that domestic violence, defined as

violence that occurs within the domestic sphere perpetrated by both private and State actors, constitutes a violation of the human rights of women. State policies, manifested by both State action and inaction, may perpetuate and/or condone violence within the domestic sphere, although it is the duty of States to ensure that there exists no impunity for the perpetrators of such violence. "In the case of intimate violence, male supremacy, ideology and conditions, rather than a distinct, consciously coordinated military establishment, confer upon men the sense of entitlement, if not the duty, to chastise their wives. Wife-beating is, therefore, not an individual, isolated, or aberrant act, but a social license, a duty or sign of masculinity, deeply ingrained in culture, widely practised, denied and completely or largely immune from legal sanction". 6/ It is, therefore, argued that the role of State inaction in the perpetuation of the violence combined with the gender-specific nature of domestic violence require that domestic violence be classified and treated as a human rights concern rather than as a mere domestic criminal justice concern. 7/

30. Under international human rights law, Governments are not only obliged to refrain from committing human rights violations but also to prevent and respond to human rights abuses, without discrimination. In the past, however, a narrow interpretation of international human rights protections has overlooked the issue of State inaction to prevent and punish violations committed by private actors, despite provisions in, inter alia, the International Covenant on Civil and Political Rights, which require States to respect and ensure, among other things, the right to life, the right to be free from torture and cruel, inhuman or degrading treatment and the security of person.

31. Increasingly, however, international legal interpretations and norms are evolving to define more clearly the positive role and responsibility of the State in preventing abuses perpetrated by para-State or private actors. The concept of State responsibility has developed to recognize that States also have an obligation to take preventive and punitive steps where human rights violations by private actors occur. In this context, the Human Rights Committee has clearly stated that a State not only has a duty to protect its citizens from such violations but also to investigate violations when they occur and to bring the perpetrators to justice. 8/ At the regional level, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (the "Convention of Belém do Pará") is the first regional human rights treaty to focus exclusively on gender-based violence and to prohibit violence within the home.

A. Due diligence

32. It follows from the above that, by definition, a State can be held complicit where it fails systematically to provide protection from private actors who deprive any person of his/her human rights.

33. However, unlike for direct State action, the standard for establishing State complicity in violations committed by private actors is more relative. Complicity must be demonstrated by establishing that the State condones a pattern of abuse through pervasive non-action. Where States do not actively engage in acts of domestic violence or routinely disregard evidence of murder,

rape or assault of women by their intimate partners, States generally fail to take the minimum steps necessary to protect their female citizens' rights to physical integrity and, in extreme cases, to life. This sends a message that such attacks are justified and will not be punished. To avoid such complicity, States must demonstrate due diligence by taking active measures to protect, prosecute and punish private actors who commit abuses.

34. In 1992, the Committee on the Elimination of Discrimination against Women (CEDAW) adopted General Recommendation 19, in which it confirmed that violence against women constitutes a violation of human rights and emphasized that "States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation." 9/ The Committee also made recommendations on measures States should take to provide effective protection of women against gender-based violence, including, inter alia:

"(i) Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including, inter alia, violence and abuse in the family, sexual assault and sexual harassment in the workplace;

"(ii) Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;

"(iii) Protective measures, including refuges, counselling, rehabilitation action and support services for women who are the victims of violence or who are at risk of violence."

35. The Declaration on the Elimination of Violence Against Women also calls on States to "pursue by all appropriate means and without delay a policy of eliminating violence against women" and, among other things, to "exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons (art. 4)."

36. The Inter-American Court of Human Rights has issued a judgement in the case of Velásquez Rodríquez, 10/ which articulates one of the most significant assertions of State responsibility for acts by private individuals; this represents an authoritative interpretation of an international standard on State duty. The opinion of the Court could also be applied, by extension, to article 2 of the International Covenant on Civil and Political Rights (ICCPR), which requires States parties to ensure to all individuals the rights recognized in that Covenant. In the same case, the Inter-American Court further reaffirmed that States are "obliged to investigate every situation involving a violation of the rights protected by [international law]". It discussed the scope of the duty of States, under article 1 of the American Convention on Human Rights, "to ensure" the rights within the treaty to all persons within their jurisdiction. The Court stated that a State "has failed to comply with [this] duty ... when the State allows

private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention". 11/ Moreover, the Court required Governments to:

> "Take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within this jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation." 12/

This includes "ensur[ing] that any violations are considered and treated as illegal acts". Consistent with this reasoning, States should be held accountable for consistent patterns of non-enforcement of criminal law. Thus, what would otherwise be wholly private conduct is transformed into a constructive act of State, "because of the lack of due diligence to prevent the violation or respond to it as required by the [American Convention]". 13/

37. The Court also clearly stated that a single violation of human rights or just one investigation with an ineffective result does not establish a lack of due diligence by a State. Rather, the test is whether the State undertakes its duties seriously. Such seriousness can be evaluated through the actions of both State agencies and private actors on a case-by-case basis. The due diligence requirement encompasses the obligation both to provide and enforce sufficient remedies to survivors of private violence. Thus, the existence of a legal system criminalizing and providing sanctions for domestic assault would not in itself be sufficient; the Government would have to perform its functions to "effectively ensure" that incidents of family violence are actually investigated and punished. 14/

38. For example, actions by State employees, the police, justice, health and welfare departments, or the existence of government programmes to prevent and protect women victims of violence are all concrete indications for measuring due diligence. Individual cases of policy failure or sporadic incidents of non-punishment would not meet the standard to warrant international action.

39. When setting out the international legal framework relevant to domestic violence in her preliminary report, the Special Rapporteur wrote, with regard to State responsibility:

> "In the context of norms recently established by the international community, a State that does not act against crimes of violence against women is as guilty as the perpetrators. States are under a positive duty to prevent, investigate and punish crimes associated with violence against women." 15/

B. Equal protection of the law

40. International law, as contained in, inter alia, articles 2 (1), 3 and 26 of the ICCPR, imposes a duty on States not to discriminate on a number of specified grounds, including gender, in the protection of human rights. Failure to fulfil this duty constitutes a violation of human rights. Women victims of violence, therefore, have an equal right to the enforcement and

protection of the law as any other victim of violence, so that a pattern of non-enforcement amounts to unequal and discriminatory treatment on the basis of gender.

41. The Convention on the Elimination of All Forms of Discrimination against Women, in article 2, requires States parties to "pursue by all appropriate means and without delay a policy of eliminating discrimination against women", which includes the duty "to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation" and "to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women". Similar provisions are contained in the African Charter on Human and Peoples' Rights (arts. 2 and 3), the American Convention on Human Rights (arts. 1 and 24) and in the European Convention for the Protection of Human Rights and Fundamental Freedoms (art. 14).

C. Torture and cruel, inhuman and degrading treatment

42. It has also been argued by jurists, based on the work of psychological experts in torture and gender violence, 16/ that, depending on its severity and the circumstances giving rise to State responsibility, domestic violence can constitute torture or cruel, inhuman and degrading treatment or punishment under the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This view challenges the assumption that intimate violence is a less severe or terrible form of violence than that perpetrated directly by the State.

43. Torture, as defined in international human rights law, generally involves four critical elements: (a) it causes severe physical and/or mental pain, it is (b) intentionally inflicted, (c) for specified purposes and (d) with some form of official involvement, whether active or passive. 17/

44. In this context, it is argued that, like torture, domestic violence commonly involves some form of physical and/or psychological suffering, including death in some cases. Secondly, domestic violence, like torture, is purposeful behaviour which is perpetrated intentionally. Men who beat women partners commonly exercise control over their impulses in other settings and their targets are often limited to their partners or children. Thirdly, domestic violence is generally committed for specific purposes including punishment, intimidation and the diminution of the woman's personality. Lastly, like torture, domestic violence occurs with at least the tacit involvement of the State if the State does not exercise due diligence and equal protection in preventing domestic abuse. This argument contends that, as such, domestic violence may be understood to constitute a form of torture.

45. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment covers private acts of torture or ill-treatment when carried out with the "consent or acquiescence of a public official (art. 1 (1))". Accordingly, the international human rights framework could be applied to address discriminatory laws or customs, like exceptions for marital rape or the defence of honour, which exempt perpetrators of domestic violence

from sanctions and reflect the consent of the State. If domestic violence were to be treated as a form of torture, States would be obligated to take legal and other measures to prevent domestic abuse through training, investigation and prosecution or extradition of all offenders.

46. Jurists and experts have documented that the physical and/or psychological abuse characteristic of both official torture and domestic violence is comparable in both kind and severity. They emphasize that both the battered woman and the prisoner live isolated under a reign of terror and that both may suffer physical violence resulting in death or serious impairment as well as often profound and lasting psychological debilitation. Rape is common in both contexts and is commonly reported as the most devastating. Although the battered woman is seemingly free to leave while the prisoner is not, a battered woman's fear of precipitating deadly violence against herself or her children may make escape dangerous; the lack of resources, legal and community support and alternative means to survive may make escape seem impossible as well as reinforce her shame, hopelessness, and sense that she deserves this treatment.

47. Second, like officially inflicted torture, domestic violence is purposeful behaviour which is perpetrated intentionally. Men who beat women partners commonly exhibit control over their impulses in other settings and their targets are often limited to their partners and/or children. Third, like official torture, domestic violence is committed for the internationally specified (specific) purposes of eliciting information, punishment, intimidation, discrimination, and, under the Inter-American Convention to Prevent and Punish Torture, to obliterate the personality and diminish the capacities of the woman. As in torture, battering may involve a humiliating interrogation whose purpose is more the assertion of supremacy and possession over the victim than the acquisition of information. Battered women, like official torture victims, may be explicitly punished for infraction of constantly changing and impossible to meet rules. Both may be intimidated and broken by the continual threat of physical violence and verbal abuse; and both may be most effectively manipulated by intermittent kindness. Intimate violence is, as has been internationally recognized, an expression and act of gender discrimination.

48. Finally, where the State does not exercise due diligence and equal protection to prevent and punish domestic abuse, it, like official torture or independent paramilitary violence, occurs with at least the tacit involvement of the State. Where the State permits this violence or is passive or half-hearted, it abandons the battered woman to the dominion of the batterer and tacitly supports that dominion. On these bases, it is contended that severe domestic violence can be understood as a form of torture while less severe forms may be sanctioned as ill-treatment under the ICCPR.

49. In addition, the United Nations Convention against Torture covers private acts of torture or ill-treatment when carried out with the "consent or acquiescence of a public official". Accordingly, the international human rights framework could be applied to address a range of situations from discriminatory laws or customs, like the marital rape exemptions or the

defence of honour which exempt domestic abuses from sanction, to situations where adequate positive steps to prevent and punish this violence are not undertaken by the State.

50. The argument that domestic violence should be understood and treated as a form of torture and, when less severe, ill-treatment, is one that deserves consideration by the rapporteurs and treaty bodies that investigate these violations together perhaps with appropriate NGO experts and jurists.

D. Discrimination

51. Arguments have also been put forward to expand and enlarge the interpretation of international law beyond the standards of due diligence, non-discrimination and even torture, to propose that gender-based violence is a form of discrimination against women and should, therefore, be considered a human rights violation in itself. Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women defines such discrimination as:

> "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women ... of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".

52. In its General Recommendation 19, the CEDAW stated that the general prohibition of gender discrimination contained in the Convention included:

> "... gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty".

53. The Committee also clarified its view that violence against women is a form of discrimination. Proponents of a broader interpretation of international law point out that virtually every society contains forms of brutality and violence directed at women. While assaults are committed throughout all sectors of society, gender-based violence, such as domestic violence, is directed primarily at women with the intention of depriving them of a range of rights and maintaining their subordination as a group. Because of the systematic and pervasive nature of this form of female subordination worldwide, it is argued that gender-based violence is a distinct form of discrimination which should constitute a violation of international human rights law in itself. 18/

IV. MANIFESTATIONS OF DOMESTIC VIOLENCE

54. Throughout a woman's life cycle, there exist various forms of gender-based violence that manifest themselves at different stages. Most of this violence is domestic, occurring within the home, perpetrated by those to whom the woman is closest. Even before birth, females in cultures where son preference is prevalent are targeted by the violent discriminatory practices

of sex-selective abortion and female infanticide. Violence against the girl child manifests itself as enforced malnutrition, unequal access to medical care, as well as physical and emotional abuse. Incest, female genital mutilation, early childhood marriage and other harmful traditional practices, and the sale of children by their parents for prostitution or bonded labour are all forms of violence inflicted on girl children.

55. These practices are compounded by violence associated with courtship. Throughout their adult lives, women become victims and survivors of woman-battering, marital rape, dowry violence, domestic murder, sati, forced pregnancy, abortion and sterilization, abuse and violence against widows and elders that is perpetrated against female domestic workers. This extensive list of violence that plagues women in their homes throughout their lives illustrates the myriad manifestations of domestic violence. Although the distinct social, cultural and political contexts in which domestic violence exists give rise to different forms of domestic violence, it is continuously prevalent, transgressing national borders and cultural identities. Despite such universality, however, a conspiracy of silence continues to conceal the extent of the violence.

A. Woman-battering

56. Woman-battering or domestic assault is the most common form of domestic violence, characterized by the use of physical or psychological force, or the threat of such force, by the dominant domestic partner, whilst recognizing the overwhelming probability that this partner is male, for the purpose of intimidating, manipulating or coercing the subordinate partner. 19/ Women victims who survived woman-battering report that such violence often includes various methods of torturous physical violence, such as kicking, punching, biting, slapping, strangling, burning, throwing acid, beating with fists or objects, raping with body parts or objects, stabbing and shooting. At its most extreme, woman-battering may lead to domestic murder.

57. Physical violence is not, however, the sole weapon of the batterer. Like the act of torture, batterers often use a debilitating combination of physical and psychological violence in a process of domination and exertion of control, meant to destabilize, victimize and render the woman powerless. Psychological abuse resulting from the spoken word, limitations on and control of social mobility and deprivation of economic resources generally accompany physical battering. 20/ The mere existence of violence against women in general and domestic violence in particular spreads fear among women, often restricting the way in which they lead their lives.

58. Many victim-survivors of battering report that the psychological violence is worse than the physical brutality. Beatings leave scars as an external proof of the private reality. With no scars, no wounds to dress, women report that they are often made to feel mentally destabilized. Battered women have a high incidence of stress and stress-related illnesses such as post-traumatic stress syndrome, panic attacks, depression, somatic problems, elevated blood pressure, alcoholism, drug abuse and low self-esteem. These psychological consequences lead to an alarmingly high incidence of suicide and suicide attempts. Studies in India, Bangladesh, Fiji and the United States of America, as well as in Papua New Guinea and Peru, reveal a high correlation

between domestic violence and suicide. Women who are victims of domestic violence are 12 times more likely to attempt suicide than those who do not live with such violence. In fact, as many as 35 to 40 per cent of battered women in the United States of America attempt suicide, many successfully. 21/

59. Victim-survivors of woman-battering, fearing for their lives, are often compelled to flee their homes. However, due to a lack of support services for victim-survivors of domestic violence many, if not most of these women have no place to go. In New York City, for example, 59 per cent of those who seek shelter in the city's battered women's shelters are turned down because there is no space. Consequently, in the United States of America, victim-survivors of domestic violence and their children constitute a high percentage of the homeless population. 22/ In countries where there are no organizations which provide services or shelter to victim-survivors, women have little hope of escaping without the help of understanding friends or family members.

60. Women victims of domestic violence are being murdered by their batterers with increasing frequency. In fact, research has documented a pattern in the frequency and severity of violence that accompanies the amount of time spent in an abusive relationship, since women who are killed by their batterers generally have lived for many years with their violent partners. Studies conducted in Australia, Bangladesh, Canada, Kenya, Thailand and the United States of America document the reality of femicide committed within the domestic sphere. 23/ Women's groups in some southern African countries have also begun documenting the increasing incidents of femicide. One project, undertaken by Women in Law and Development in Africa, studied the role of Governments in five southern African States in the perpetration of violence against women in general and femicide in particular. The project found that the States' failure to uphold and protect the rights of women in those five countries contributed to the incidence of femicide. 24/

61. Furthermore, in many cultures the role of the mother-in-law is one of the few positions of relative power for women within the family. Reportedly, many South Asian women refugees in Canada seek shelter not only from the abuse perpetrated by their husbands but also from the physical and psychological violence committed by in-laws who often live in the same home. 25/ Additionally, women who live in rural areas of China report that domestic violence often involves the members of the husband's family as well as the husband himself. 26/

Statistical data on woman-battering

62. There is a need for detailed research to be carried out regarding the incidences of domestic violence. Although research has been undertaken in numerous countries in all regions of the world, more data is available from Northern countries, in particular Canada and the United States of America. None the less, the documentation leaves little doubt regarding the extent or seriousness of the problem:

(a) Over 81 per cent of the assaults reported in Sao Paulo, Brazil, in 1985 were committed by husbands, boyfriends or former husbands and boyfriends; 27/

(b) Accompanying the rapid increase in the incidence of divorce in China are indications of the prevalence of domestic violence. A sample survey of divorce cases demonstrated that in one quarter of all cases wife battery was an issue; 28/

(c) In France, women comprise 95 per cent of victims of reported violence. Of these women victims, 51 per cent were assaulted by their husbands; 29/

(d) In 1990, a random sampling of women in Guatemala found that 49 per cent of them had been physically, emotionally and/or sexually abused by a male partner; 30/

(e) A survey of violence against women in India revealed that in almost 94 per cent of the cases the victim and the offender were members of the same family; in 90 per cent of these cases the wife was the victim of the husband. Furthermore, 9 out of 10 murders of women were incidents of husbands killing their wives; 31/

(f) It is estimated that 10 per cent of married Israeli women are battered; 32/

(g) In a survey of 796 Japanese women, 77 per cent reported that they had experienced some form of domestic battery. Of these, 58.7 per cent said that they had experienced physical violence, 65.7 per cent reported that they had suffered emotional violence and 59.4 per cent indicated that they had suffered sexual violence. Furthermore, over 11,000 women in Japan each year file for divorce on grounds of domestic violence; 33/

(h) In a survey of women in the Kissi district of Kenya, 42 per cent reported that they were beaten regularly by their spouse; 34/

(i) In New Zealand, 22.4 per cent of women in a random sample survey had been physically battered at some point since the age of 16; in 76 per cent of the cases the batterer was a male partner. Additionally, 20.7 per cent of the women who were abused by their male intimates reported that the abuse included not just physical abuse but also sexual abuse; 35/

(j) In Nicaragua, 44 per cent of surveyed men admitted that they beat their wives; 36/

(k) A survey conducted by a Pakistani newspaper reported that 99 per cent of women who worked in the home and 77 per cent of those working outside the home who responded to the survey were battered by their husbands; 37/

(l) Statistics compiled by the Forensic Hospital in Bucharest, Romania, indicate that 28 per cent of the women seeking treatment at the hospital had been beaten by an intimate male partner. A doctor at the hospital, however, warned that the statistics were unrepresentative because victims generally seek treatment only after several assaults. Additionally, judges estimate that 60 per cent of the divorce cases in Bucharest involve claims of physical violence; 38/

(m) In the United Republic of Tanzania, 60 per cent of the women surveyed in a three-district study on domestic violence, reported that they had been physically battered by a domestic partner; 39/

(n) In the United States of America, an estimated 2 million women are beaten by their male partners each year, approximately half of whom seek medical treatment; 40/

(n) In 1992, a study of Zambian women documented, inter alia, that 17 per cent believed that violence, either physical or psychological, was normal in marriage; 41/

63. The story of Man-Soon Cheng (Republic of Korea) is a classic case of wife-battering: 42/

> "Man-Soon, 42, is a mother of three children, whose husband is in the military. Although she had been planning to marry a different man, she was forced to marry her husband, who had been a friend of hers, after he raped her and, in Man-Soon's words, caused her to 'lose her purity'. According to Man-Soon, she felt guilty and believed that she must accept responsibility and marry the man who had raped her.
>
> "Whenever he was drunk, Man-Soon's husband would become violent. At first his violence was not directed at her, but soon it turned on Man-Soon. He threatened her and beat her, often using techniques learned from his military life. Man-Soon's husband strangled her, stabbed her with chopsticks, beat her with a club, ruptured her eardrums and set a tent in which she was sleeping on fire. As a result, it was Man-Soon, not her husband, who sought psychological help. Fearing for her safety, Man-Soon left him several times but finding she had nowhere to go, she would return only to receive more severe beatings. Eventually, Man-Soon went to 'Shimter', a shelter for battered women in Seoul. While at the shelter, Man-Soon became self-sufficient and has since moved into her own flat. She has not returned to her husband.
>
> "Man-Soon reports that her husband was raised in an atmosphere of domestic violence. His mother was beaten by his grandmother and his father. Man-Soon's husband and his three brothers all are batterers."

B. Marital rape

64. More recently, many countries have begun to recognize marital rape as a criminal offence, although some argue that rape does not exist between husband and wife. Rape is broadly defined as non-consensual intercourse through the use of physical force, threats or intimidation, including the rape by a man of his wife. However, the recognition of marital rape not only as a crime but as a violation of human rights is complicated by the conception of the home as a private sphere. It is only recently that this public-private dichotomy, at its most intimate in the case of marital rape, has been challenged.

65. In Sri Lanka, for example, recent amendments to the Penal Code recognize marital rape but only with regard to judicially separated partners, and there exists great reluctance to pass judgement on rape in the context of partners

who are actually living together. However, some countries have begun to legislate against marital rape, refusing to accept the marital relationship as a cover for violence in the home. For example, the Government of Cyprus, in its contribution to the Special Rapporteur, reports that its Law on the Prevention of Violence in the Family and Protection of Victims, passed in June 1993, clarifies that "rape is rape irrespective of whether it is committed within or outside marriage".

C. Incest

66. Incest, or intrafamilial child sexual abuse, is a particularly pernicious crime because it is a betrayal of trust. The classic case of incest involves a girl child and her father, step-father or father figure. Incest does not necessarily imply a biological relationship but a social one between a child and a parental figure. The vast majority of countries throughout the world legislate against incest and make it a criminal offence, as reflected in most of the replies received by the Special Rapporteur on this issue. However, the essential question is not whether such acts are criminal but whether sanctions are effectively applied in any given society.

67. Incest is widely viewed as unacceptable for social and biological reasons. Laws banning incest are, consequently, a reflection of the taboo that surrounds incest. But precisely because incest is in contravention of the most fundamental social norms in the world, families in which it occurs keep their knowledge secret, making it one of the most invisible, and most difficult to account for, forms of domestic violence.

68. Moreover, children victims of incest, are a particularly vulnerable group, as they play no part in decision-making and have no control over their own social situation. In addition, they have no access to protection while they maintain a situation of dependency vis-à-vis other family members. Often the child victim is too young to rationalize or understand her/his predicament having been coerced under cover of secrecy and familial authority. The divide between male and female and between adult and child is fully exploited.

69. The results of incest are invariably damaging. Physicians have recorded some of the symptoms of physical damage inflicted by incest which are, inter alia, poor sphincter control, anal and vaginal laceration, sexually transmitted disease and early childhood pregnancy. Equally damaging are the long-term psychological effects which manifest themselves in behavioural problems. Moreover, abused children go on to abuse their own with alarming regularity.

70. Although laws prohibit incest, the victim's rights are sacrificed as a result of secrecy, court proceedings which require forensic evidence of incest, evidentiary procedures such as the fact that a wife cannot testify against her husband and the notion that an abused child may be cross-examined at length, so that many cases are dropped or not brought to court. It is, therefore, imperative that mechanisms be set up to identify incest and prosecute perpetrators, so that the law does not remain theoretical.

71. The Convention of the Rights of the Child, in article 19, states that:

> "1. States parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has care of the child.
>
> "2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement."

72. These provisions make it clear that incest is not only a crime but a violation of the human rights of children protected under international law. States therefore are held to due diligence standards in preventing, prosecuting and punishing perpetrators of incest in all societies.

D. Forced prostitution

73. Domestic violence in the form of forced prostitution by male partners or parents has been reported worldwide. In Pakistan, for example, it is not uncommon for women to be prostituted by their husbands in addition to being physically or sexually abused by them. 43/ Also, many young indigenous women from rural villages in Nepal are sold or tricked by their husbands or relatives into being trafficked to India for prostitution. 44/ Prostituted women are then detained, often for a period of seven years, as sexual slaves, systematically raped and repeatedly subjected to other forms of sexual torture. Some women who have escaped report that they were tortured, beaten and starved when they attempted to resist their prostitution. Furthermore, prostituted women are forced to work in inhumane and degrading conditions. In India many of them are forcibly sterilized. Frequently, prostituted women are barred from communicating with their families and prohibited from returning to their homes. Prostituted women generally have little or no access to medical care despite the fact that they are at risk of numerous and deadly infectious diseases, including a high incidence of HIV/AIDS infection. Once it has been discovered that a woman has contracted a disease, she is forced to return to her village, where little understanding or medical assistance is available. 45/

74. Even after a prostituted woman is released from her servitude, owing to the stigma attached to being prostituted, she is often unable to return to her home village because she will be ostracized. One victim-survivor reports that "once we are sold, our lives are finished. After we come back to our villages, society behaves as if we had invited our fates ourselves". 46/

75. Laws regarding the sale and trafficking of women are inadequate and poorly enforced. Reportedly, legal action is rarely taken against traffickers and when such action is undertaken it is done merely for the sake of formality and, thus, fails to produce results. 47/

76. In the case of a Pakistani woman victim, Ayesha, her husband, Baig Ghulam Mohammad, a heroin addict, had been subjecting her to beatings for many years. 48/ Additionally, for the last four years her husband had allegedly forced her into prostitution in order to maintain his drug habit. He had repeatedly sold her to Ajaz Faiz, his son-in-law from his first marriage:

> "On 19 May 1995, Ayesha was finally compelled to abandon her home for fear of her life. According to Ayesha, her young children and the neighbour's children were involved in a quarrel to which she responded by reprimanding all the children. Her husband, after hearing about this, became angry with Ayesha and subjected her to a beating. Since this was not the first incident of beating, Ayesha threatened to go to Mandi Hira Singh police station to report the beating. Ayesha's husband then threatened her with an axe and a butcher's meat chopper. Later that day Ayesha escaped her husband and went to report the matter to the police. At the police station, Ayesha met some of her husband's relatives who advised her not to go to the police, claiming that the matter could be settled within the family. She also met her uncle who advised the same. In the meantime Ayesha's husband had learned of her intentions to report the incident. He, along with some other relatives, followed her to the police station. Once he arrived and had assured Ayesha's uncle that he would neither beat nor hurt her, Ayesha's uncle convinced her to return to the village.
>
> "They returned the same day. That night Ayesha's husband suddenly took the children out of the house and then returned with six of his relatives. According to Ayesha, her husband, and his six relatives, all beat her. After the beating, her in-laws held her down while her husband retrieved a kitchen knife and cut off her nose. After this, Ayesha ran away to her relatives in Karachi where she remains".

E. Violence against domestic workers

77. Violence against female domestic workers, a problem of escalating proportions, has only recently been given attention at the international level. The silence that surrounds violence against domestic workers arises partially out of the unwillingness of both sending and receiving States to accept responsibility for migrant workers owing to the economic benefits associated with migrant labour, as well as to the lack of documentation regarding such violence. In addition, there are obstacles to addressing violence against migrant domestic workers because, on leaving their home country, they are often deprived of their rights as citizens. As elaborated in the Special Rapporteur's preliminary report, women migrant workers suffer double marginalization, and consequently higher levels of violence, in both the sending and the receiving State.

78. The issue of violence against female migrant domestic workers presents a particularly difficult problem in the Asian and Middle Eastern regions. 49/ Increasing unemployment and poverty in countries such as Sri Lanka, India, Bangladesh, the Philippines and Indonesia lead women to seek employment abroad primarily in areas of unskilled labour, overwhelmingly as domestic workers. At least 50 per cent of the over 10 million Asian migrant workers are women. 50/ Thousands of Sri Lankan women are, for example, currently working in countries of the Middle East, Greece, Hong Kong, Japan, Mauritius and Singapore. 51/

79. Factors such as isolation from one's community and family, sexism, racism and classism further exacerbate the conditions that lead to widespread violence against domestic servants and abuse at the hands of their employers within the walls of what has become both their home and their workplace.

80. In Kuwait, for example, from March 1991 until August 1992, at least 2,000 women domestic servants escaped violent situations, generally seeking shelter in their embassies. A non-governmental organization has identified that "there exists a significant and persuasive pattern of rape, physical assault and mistreatment of Asian maids that takes place largely with impunity" in Kuwait. 52/ Such violence has also been documented in other countries including the United Arab Emirates, Saudi Arabia, Malaysia and Singapore.

81. In many countries with large migrant worker populations, there exist a variety of formal and informal legal and social structures that conspire against women domestic workers. Non-existent and ineffective laws and enforcement mechanisms exacerbate violence by creating a situation in which women domestic workers are vulnerable, lack protection and rights. Cases are cited in which the police have halted women's attempts to flee abusive domestic situations and to file formal complaints by returning women to their violent employers. 53/ Furthermore, even though there do exist mechanisms of criminal accountability, such as rape and assault statutes, cultural biases against believing women and tendencies to blame the victims of violence themselves often thwart attempts to transform reports into investigations, arrests or prosecutions.

82. Commonly, recruiters or the employers confiscate the passports of domestic workers, restricting their mobility within the country, as well as prohibiting their departure from the country. Confiscation is then compounded by inflexible procedures that require exit visas and, often, the original passport. Such policies, whether codified by law or implemented through informal mechanisms, violate international human rights law. Not only do such practices violate the woman's right to leave the country and to return to her own, but also a woman's inability to leave the violent domestic situation which may result in violations of her right to life and personal security, as well as her right to be free from involuntary servitude and arbitrary detention.

83. In some cases the laws of a country are drafted explicitly to exclude domestic workers from their purview of protection. For example, the Private Sector Labour Law No. 38 in Kuwait regulates working conditions for all workers in the private sector, both internal and expatriate, by restricting

the number of hours employees can be required to work, providing for overtime benefits and requiring weekly and annual leave. Domestic workers, however, are excluded from the law and, thus, have none of these protections. 54/ Physically and often linguistically isolated from everyone but the family for which they work, women migrant workers have no opportunities to organize and collectively demand their rights.

84. Sinhala Bolasi's story is a case in point: 55/

> "Sinhala Bolasi, a 20-year-old Sri Lankan woman, was admitted to Al-Razi Orthopaedic Hospital on 4 April 1992 after her employer detained her in one of the rooms in the house and raped her. According to the victim, after raping her, he threw her off the balcony. She landed on the ground several stories below. At the time of her admittance to the hospital, both of Sinhala's ankles were broken, she was bleeding vaginally and she had internal injuries and lacerations to her labia and rectal area that required stitches. It was observed that she had a tear that extended from her vagina to her anus, an injury consistent with having been forcibly raped by someone using a sharp object.
>
> "It is reported that Sinhala was catatonic and unresponsive to verbal cues for weeks following her admission to the hospital. Although she was able to answer questions in early May 1992, she still appeared withdrawn, had trouble focusing on faces of those around her and became visibly agitated when questioned about how she received her injuries.
>
> "Despite an initial investigatory report by hospital-based police investigation and a letter from a non-governmental organization to His Highness, the Emir of Kuwait dated 15 June 1992, requesting that Sinhala Bolasi's case be investigated and she be kept safe from her employer, Kuwaiti authorities appear to have taken no action against the victims's former employer."

85. The case of Flor Contemplacion from the Philippines, 56/ which was submitted to the attention of the Special Rapporteur, demonstrates the interlocking nature of domestic violence perpetrated by employers against domestic workers and that perpetrated by States through discriminatory policies and procedures:

> "Flor Contemplacion, a 42-year-old Filipina mother of four children, had been a domestic worker in Singapore for six years until her sentencing and ultimate execution for allegedly murdering another Filipina and the 3-year-old son of that woman's employer. Although Flor Contemplacion was convicted of the double murder, a young Filipina domestic servant who had since returned to the Philippines came forward with information that may have proved Contemplacion's innocence. According to the witness, it was the employer who killed his domestic servant after he discovered that his son had drowned in the bathtub due to an epileptic seizure during which he hit his head. Despite pleas made at the last minuce by the Government of the Philippines, the Government of Singapore refused to delay her execution in order to investigate the new information. Flor Contemplacion was hanged on 17 March 1995."

F. Violence against the girl child

86. While the abuse of children in the form of physical, psychological and sexual violence is perpetrated against both male and female children, there are gender dimensions to child abuse. For example, an estimated 90 per cent of victims of child sexual abuse are girl children and more than 90 per cent of the perpetrators of child sexual abuse are men. 57/

87. There exists a documented link between woman-battering and child abuse. According to one expert, "children whose mothers are battered [are] more than twice as likely than children whose mothers are not battered to be themselves abused, by either their mothers' attacker or their mothers. 58/ Furthermore, children who live in homes in which their mother is abused risk injury or even death at the hands of their mother's abuser if they intervene in, or inadvertently become involved in a violent episode. Batterers often turn their violent rages on anyone who threatens their authority. Attempts made by children to intervene or to protect their mothers not only have led to injuring the child but have also led children to kill their fathers. This was the case in Thailand when the 15-year-old son of a woman who was being battered by her husband killed the abuser, his father. 59/ Research supports the connection between woman-battering and child abuse. In the United States, for example, the rate of child abuse in violent domestic situations is 1,500 per cent of the national average. 60/

88. Not surprisingly, significant psychological effects ensue for children living in violent homes. A child who comes from a violent home in which her or his mother was beaten exhibits substantially more emotional and behavioural problems than a child from a non-violent home. Such problems often become more pronounced when the abused mother of the child attempts to separate and seek shelter, a process which may or may not include the child. Although women frequently bring their children with them to shelter, the shortage of space causes some domestic violence shelters to exclude children. Thus, women are forced to choose between abandoning their children, which may leave their children's safety in a precarious position, and seeking safety for themselves or remaining in the abusive relationship. Left with this choice, many women choose to remain, so that it can be said that the lack of adequate shelter space directly increases women's vulnerability to violence. When women do seek shelter, the combination of displacement, crowded communal living and sometimes strict rules pose challenges and cause emotional strain for both women and their children. Many shelters have programmes distinctively designed for children and children's advocates expressly trained to address the particular needs of children from violent homes. None the less, the transition from a violent home to a communal shelter can be a difficult one.

89. Furthermore, children from violent homes make up a disproportionately high percentage of street children throughout the world. In Bogotá, Colombia, for example, a study by the Metropolitan Police documented that 1,299 children were living on the streets after being forced from homes in which domestic violence occurred. 61/ Children who are compelled to leave their violent homes are often victimized by systems that use punishment to "rehabilitate" and "protect" runaways. With nowhere else to go, many children live on the

streets where they face increased violence and exploitation. Of the 1,299 children in the Bogotá study, for example, a reported 389 children were prostituted, 32 were beggars and 122 used drugs. 62/

90. Links have also been documented between both witnessing and directly experiencing domestic violence as a child and violent behaviour both within and outside the home as an adult. In one study that covered a 30-year period, childhood experiences with domestic violence, specifically woman-battering, were found to be "significantly predictive of serious adult personal crimes [including] assault, attempted rape, rape, attempted murder, kidnapping and murder." 63/

G. Sex-selective abortions and female infanticide

91. Son preference is the discriminatory preference for male children that often results in violence against and maltreatment of female foetuses and girl children. When son preference turns to violence directed at the child by a parent, a family member or the State, it can be clearly labelled as domestic violence. In many cases, States either passively acquiesce or overtly sanction such violence, mostly perpetrated by parents or family members, through official policies.

92. Although infants are comparatively rare targets of domestic violence, the violence directed at them in the form of sale of children, the binding of body parts, enforced malnutrition and infanticide is often lethal when it occurs.

93. "The persistence in India of cultural practices that discriminate against girls and women means not only the abuse but, finally, the deaths of countless women". 64/ In countries such as India and China, where an already strong cultural and traditional bias exists in favour of male children, technological advances are used to the detriment of women. For example, amniocentesis and sonogrammes to detect the sex of a foetus lead to the abortion of thousands of female foetuses. A study in one clinic in India showed that out of 8,000 aborted foetuses, 7,997 of them were female. Another survey found that, in one year, 40,000 female foetuses were aborted in Bombay. 65/

94. Within cultures with a high level of son preference, female infanticide provides a disturbing alternative for women who do not have access to amniocentesis, sonogrammes and abortion. Infanticide has been described as a "mechanism through which societies dispose of infants whose birth or condition makes them a liability to the family or to the entire group". 66/ The most common "reason" cited for committing infanticide is to relieve parents of the "burden" associated with the birth of a girl child. The high level of sex-selective abortions in India, for instance, arises from the same societal attitude that regards girl children as a social and economic burden. 67/ In this context, the Special Rapporteur welcomes the adoption by the Government of India of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act of September 1994 which effectively prevents the results of pre-natal procedures which reveal the sex of the foetus from being used as a reason for female foeticide. The Special Rapporteur also looks

forward to a national programme of action for the eradication of female infanticide currently under elaboration by the Government of India.

95. China's one-child policy demonstrates the interlinkage between State-condoned violence and domestic violence. Through this policy, the Government of China intrudes into the domestic sphere by regulating and restricting the number of children a married couple may have and, at times, by violently enforcing this policy. 68/ The one-child policy violates a woman's right to physical integrity and security of person, and the right of both parents freely to determine the timing and spacing of their children. Additionally, in a culture where son preference is widespread, this policy encourages and, ultimately, sanctions sex-selective abortions of female foetuses and female infanticide. In 1994, in China, 117 boys were born for every 100 girls, a figure significantly higher than the world average of 106 males to every 100 females. Thus, approximately 500,000 more male children than female children are born each year in China. 69/

96. The one-child policy is, in fact, a complex and differentially applied policy. The central Government of China issues ideological directives that are then implemented at the country level. One of the primary components of the policy is enforced birth control. The policy also strictly controls the age of marriage and the timing and number of children each married couple can have. Whereas urban couples are generally restricted to only one child, regardless of the sex of the child, rural couples often are allowed to have a second child if their first is female. Abortions are compulsory for single women as well as migrant women who can only avoid abortion if they return to their home region. Much of the birth control is regulated through informal measures such as peer pressure implemented through work and social units. Reportedly, it is also common for family planning officials to employ strategies of psychological intimidation, harassment and violence in order to effectuate the policy. It is alleged that many women have been forcibly removed from their homes by family planning officials in the middle of the night in order to violently enforce the policy.

97. A non-governmental organization has labelled the practices of forced abortion and forced sterilization as "cruel, inhuman and degrading treatment of detainees or restricted persons by government officials." 70/ Although the State Family Planning Commission of China claims that "coercion is not permitted", investigations have not found instances in which sanctions were imposed upon officials who used violence to promote the policy. However, people who assist women by, for example, hiding those who are threatened with forced abortion or sterilization have been illegally detained, imprisoned and tortured. In 1993, a man was sentenced by a district court in Guangzhou to 10 years in prison and three years' deprivation of political rights for participating in a "save the babies and save women group" that had assisted 20 women who were pregnant in violation of the policy. 71/

98. According to UNICEF estimates from South Asia, North Africa, the Middle East and China, there are 100 million fewer women than could be expected from general demographic trends. Other figures which are of extreme concern to UNICEF are, inter alia, the following: 72/

(a) A recent official survey in China revealed that 12 per cent of all female foetuses were aborted or otherwise unaccounted for, mainly the result of ultrasound screening throughout the country to determine the sex of unborn children;

(b) In one survey in Bangladesh, 96 per cent of women said they wanted their next child to be a boy, whereas only 3 per cent wanted a girl.

99. Further manifestations of the practice of son preference are the facts that: 73/

(a) More boys are immunized and treated by hospitals than girls. One 1990 study found that 71 per cent of babies under the age of two admitted to one hospital were boys;

(b) Girls between the ages of two and five years have higher death rates than boys in many developing countries;

(c) In many cultures, food taboos limit what girls and women are allowed to eat or they might be expected to eat smaller portions than boys and men. The result is that they do not get the protein and minerals they need. Iron deficiency affects between 75 and 96 per cent of girls of 15 or older in Africa and up to 70 per cent of girls between 6 and 14 in India.

H. Traditional practices affecting the health of women and children

100. Traditional practices reflect values and beliefs held by members of a community, often throughout many generations. However, as the Special Rapporteur has already stated, certain customary practices and some aspects of tradition, such as those related to deeply rooted power inequities of society, often constitute a cause of violence against women and girls. Blind adherence to and the delicate nature of questioning the existence of these practices, the lack of information and education in many regions where such practices are prevalent and, more often than not, State inaction with regard to these traditional and customary practices, are all factors contributing to the continuing existence of traditional practices affecting the health of women and children today in Asia, Africa and increasingly in Western countries with large immigrant communities from those regions.

101. It is important to emphasize that not all customs and traditions are unprotective of women's rights and that certain practices actually promote and defend women's rights and dignity. However, those practices that constitute definite forms of violence against women cannot be overlooked nor justified on the grounds of tradition, culture or social conformity. In this context, many international human rights instruments, such as the Convention on the Elimination of All Forms of Discrimination Against Women (art. 5 (a)), the Convention on the Rights of the Child, as well as, most recently, the Declaration on the Elimination of Violence Against Women and the Beijing Declaration and Platform for Action call on States to refrain from invoking any custom, tradition or religious consideration to avoid their obligation with respect to the elimination of all forms of violence against women.

102. The Beijing Declaration and Platform for Action also makes strong recommendations for action by Governments on this issue. It requests Governments to enact and enforce legislation against the perpetrators of practices and acts of violence against women, such as female genital mutilation, female infanticide, prenatal sex selection and dowry-related violence, and to give vigorous support to the efforts of non-governmental and community organizations to eliminate such practices. Furthermore, Governments are called upon to adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women, and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women. 74/

103. Several replies received by the Special Rapporteur addressed the question of traditional practices and are summarized below. The Special Rapporteur, in this context, calls upon all Governments to report to the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on traditional practices affecting the health of women and children on national implementation of the Plan of Action for the Elimination of Traditional Practices Affecting the Health of Women and Children. 75/

Female genital mutilation

104. Information concerning legislative measures for the prohibition of female genital mutilation was provided to the Special Rapporteur by countries in which the practice is known to occur, due in large part to the presence of large immigrant communities from mainly African countries. In this context, the Government of Australia informed the Special Rapporteur that, in Australia, the number of women from the four countries where the most extreme forms of mutilation occurs (Somalia, Eritrea, Ethiopia and the Sudan) has increased by 154 per cent since the 1991 census. However, information obtained by the Family Law Council in 1993 also suggests that a range of female initiation ceremonies have been practised by Aboriginal Australians in the past, generally at the first signs of puberty. It is not known to what extent such practices persist today. The practices appear to have varied from one district to another. As far as is known, none of the ceremonies involve excision or infibulation but may have involved practices such as enlarging the vaginal orifice, cutting the perineum and breaking the hymen with a stick. Some of these practices would result in mutilation of the genitalia. Additionally, some residents of the Cocos and Keeling Islands perform a ritual circumcision ceremony. However, it is unclear whether this is purely symbolic or whether it involves clitoridectomy.

105. Also in Australia, a uniform legislative approach is currently being pursued through the Standing Committee of Attorneys-General. New South Wales has already introduced specific legislation, Queensland has prepared recommendations for consideration and the Australian Capital Territory is beginning to draft legislation. Following a report by the Australian Family Law Council in June 1994, which concluded that there should be special legislation making the practice of female genital mutilation an offence in Australia, as well as education programmes directed at relevant communities and health and welfare professionals, the Government is committed to providing

support for those who wish to resist the continuation of the practice and assistance to those who have been subjected to the procedure. The Government has agreed in principle to provide funding for the development of a national education programme.

106. With regard to legislative measures regarding female genital mutilation, the Prohibition of Female Circumcision Act 1985 of the United Kingdom makes it an offence to excise, infibulate or otherwise mutilate the whole or any part of the labia majora or labia minora or clitoris of another person or to aim, abet, counsel or procure the performance by another person of any of those acts on that other person's own body unless such an act is carried out as part of a necessary surgical operation. The maximum penalty for an offence under section 1 of the Act is a fine or five years' imprisonment or both.

107. In France, while the advisability of prosecuting the performance of a "cultural" practice was questioned for a long time, the courts have gradually come round to the view that excision is a crime. The Criminal Section of the Court of Cassation, in its decision of 20 August 1983, had already established the principle that the ablation of the clitoris, resulting from wilful acts of violence, constitutes mutilation, basing its decision on provisions of the Criminal Code which penalize "wilful assault and battery resulting in death without intent" and state that the person guilty of assault and battery is liable to a term of imprisonment if the offence has resulted in the "mutilation, amputation or deprivation of the use of a limb, blindness, the loss of an eye or other permanent disability or death without intent". These texts specify the sentence to be given to "whosoever intentionally" assaults a victim.

108. Three decisions concerning excision have been handed down recently in France, imposing prison sentences and making both the mother and the father liable to prosecution. This constitutes an interesting development because until recently only mothers had received sentences in this connection.

109. It is interesting to note that the Constitution of the Federal Democratic Republic of Ethiopia of 8 December 1994 states in article 35 (4) that "women have the right to protection by the State from harmful customs. Laws, customs and practices that oppress women or cause bodily or mental harm to them are prohibited." This is a significant step by the Government of Ethiopia, a country with a high incidence of female genital mutilation, towards the elimination of practices harmful to the health of women and children.

110. Giving rise to some concern, the Government of Lesotho indicated that "female genital mutilation still takes place in cases where girls and women are sent to initiation schools. Exactly how it is done and why is still shrouded in mystery. But it is definitely not done in sterile surroundings". The urgent need for a further study of the issue in Lesotho is apparent.

111. The United Nations Development Programme in the Gambia reported on a seminar on communication strategies to combat harmful traditional practices affecting the health of women and children. It was suggested that female genital mutilation is an age-old, deeply entrenched tradition and not done for religious reasons. "Female circumcision", in this case, consists of cutting

the tip of the clitoris, the whole clitoris or the scooping of the vulva, without any perceptible hygienic advantages and frequently associated with complications. The practice, as performed without anaesthesia, is extremely painful and often bleeding is excessive and difficult to control. Infections, leading to infertility and complications at birth, as well as psychological problems, are common consequences for girls and women who undergo this ritual.

112. The United Nations Children's Fund has instigated a number of community education programmes on the practice of female genital mutilation and works directly with women's and community groups to educate women, and in particular men, to abandon the practice because of the severe physical and psychological harm it causes to girl children and women.

113. The Special Rapporteur welcomes the proposed programme of work of the Women's Health and Development Programme within the Division of Family and Reproductive Health of the World Health Organization which proposes, inter alia, to pursue the prevention and management of the health consequences of female genital mutilation through activities such as a multi-country study of attitudes and practices of female genital mutilation among health care providers, as a basis for developing educational materials and training guidelines for nurses and midwives; the development and testing of standard research protocols; discussions with WHO country representatives and regional staff to raise awareness and identify their needs; and support for national research and intervention efforts.

114. According to information received from a non-governmental organization, in one region of Africa it is pressure from the local mullahs which makes Muslim women believe that the practice of female genital mutilation constitutes an integral part of being a Muslim and is, therefore, not to be challenged. The Special Rapporteur is firmly convinced that Islam, nor any other religion, is connected with female genital mutilation. However, in many societies, it is only with the involvement of religious leaders, village elders and other influential, mostly male, groups of society that progress towards the elimination of harmful traditional practices can be achieved. In addition to information campaigns on the health consequences for girls and women and education on human rights of women, the mentalities and social behaviour of both women and men need to be changed.

115. Finally, the Special Rapporteur wishes to express her appreciation to the work carried out at the international level by the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children within the NGO Sub-Committee on the Status of Women and its working group on traditional practices, as well as at the national level through national committees in over 25 countries in Africa.

Religious extremism

116. The problem of violence in the home resulting from religious extremism has been of serious concern to the Special Rapporteur. Her next report on violence in the community to be submitted to the Commission at its fifty-third session will dwell on the details of such violence.

V. LEGISLATION ON DOMESTIC VIOLENCE AS REPORTED BY GOVERNMENTS

117. The following chart is compiled on the basis of submissions by Governments pursuant to the request made by the Special Rapporteur for information regarding State action in relation to violence in the family, violence in the community and violence perpetrated and/or condoned by the State, and is based, in particular, on replies relevant to the issue of domestic violence.

State	Specific criminal provision on domestic violence	Protection order available in cases of domestic violence	Domestic violence as grounds for divorce	Specific provision on marital rape	Specific procedural protections for victims
Australia	X a/	X		X	
Austria		X	X	X	X
Barbados		X			
Bulgaria					
Canada	X	X		X	X
China b/					
Croatia					
Cyprus	X	X		X	X
Ecuador c/					
Germany					X
Iraq d/			X		
Japan					
Kuwait			X e/		
Lesotho					
Malta					
Mexico					
Myanmar					
Norway				X f/	X
Peru	X				
Philippines g/					
Slovenia h/					
Thailand					
Turkey					

State	Specific criminal provision on domestic violence	Protection order available in cases of domestic violence	Domestic violence as grounds for divorce	Specific provision on marital rape	Specific procedural protections for victims
United Kingdom of Great Britain and Northern Ireland				X i/	
Yugoslavia					

a/ According to information provided by the Government of Australia, "... almost all States and Territories [have] adopt[ed] specific legislation in relation to domestic violence ..." (letter dated 2 February 1995).

b/ While China does not have a domestic violence statute per se, art. 35 of the Women's Rights and Interests (Protection of) Act states that "... drowning, abandoning or brutally injuring female infants is prohibited; discriminating against or maltreating women who give birth to female children, or who are barren, is prohibited; injuring women through superstitious belief or violence is prohibited ..." (letter dated 24 September 1994).

c/ Although Ecuador currently has no domestic violence statute, the National Congress is considering draft reform of the Criminal Code, which includes a chapter on domestic violence (letter dated 7 October 1994).

d/ While Iraq does not have any criminal provisions on woman-battering, Iraqi law prohibits forced marriages (letter dated 21 October 1994).

e/ In Kuwait, art. 126 of the Personal Status Act provides for legal separation on the grounds of "bad treatment" (letter dated 8 November 1994).

f/ Although section 192 of the Norwegian Penal Code on rape "has also been applied when the offender and the victim were married", it is not clear whether marital rape is actually specifically referred to in the Penal Code (letter dated 16 February 1995).

g/ Although, as of October 1994, the Philippines had no domestic violence statute, bills on wife cruelty/beating were pending before the Parliament (letter dated 13 October 1994).

h/ In Slovenia, domestic violence is not even defined as a criminal act in cases of "light" physical injury defined to include "fractured nose, rib, light concussion, punched-out teeth" (letter dated 14 October 1994).

i/ Although the statutory definition of rape does not include marital rape, the House of Lords in R. v. R. (1992) upheld a Court of Appeals decision finding that there is no implied consent to sexual intercourse within marriage, and, thus, that it is possible for a husband to rape his wife. A statutory amendment is currently pending before Parliament (letter dated 10 October 1994).

VI. LEGAL MECHANISMS

118. In the past, the law has been extremely reticent about intervening with regard to domestic violence. The policy of preserving the privacy and integrity of the family was given more weight than helping the victim. Today, some forms of intervention, formal or informal, that are available to women experiencing domestic violence have proven to be effective in curbing incidents of domestic violence in general and woman-battering in particular. Research clearly shows that the level and immediacy of the intervention are directly linked to both the frequency and the severity of woman-battering. Thus, one expert asserts that "immediate intervention designed to stop the beating or to prevent it from ever starting is a key first line of defence in controlling wife beating." 76/

119. Those mechanisms that provide immediate protection to abused women emerge as the most effective means of controlling woman-battering, whereas protection provided after the incident has occurred does not appear to have any important impact on the prevention of woman-battering. Significantly, a study suggests that factors that predict woman-battering also foretell the delayed or non-existent nature of intervention. Thus, women are less likely to receive adequate protection or outside help from societies in which economic and gender inequality, violent conflict resolution, male domestic authority and divorce restrictions for women are prevalent. This underscores the importance of developing strategies that go beyond providing protection and that attempts to deal with the socio-cultural causes of domestic violence must also be made.

120. In this context, reference is made to addendum 2 to the present report containing model legislation on domestic violence in any given society, prepared for the Special Rapporteur by International Women in Law and Development. It could be argued that there is no one model that would lead to the eradication of violence against women in all societies but there are important elements that must be included in any strategy to combat violence against women and that can be adapted to differing socio-cultural contexts.

121. Although, in recent years, there has been increasing State recognition of the problem of violence against women, "the legal relief available to women who are victims [of] such violence remains undeveloped in most national systems." 77/ Strategies employed by Governments to address violence against women have emerged in reaction to the violence that occurs, focusing on punishing the perpetrator and protecting the victim. These strategies have relied greatly upon the law and have concentrated on the introduction of new legal measures in their attempt to address violence against women. In most countries, therefore, there exists at least one of three traditional legal mechanisms available to victims of domestic violence: criminal law, civil remedies or matrimonial relief. 78/

122. Criminal law has traditionally provided the only option for women victims of physical abuse. Even without specific statutes on domestic violence, laws on general assault, battery, manslaughter and murder, among others, should provide remedies for women and girl children in cases of domestic violence. Except in the case of marital rape, general criminal prohibitions have not explicitly excluded criminal behaviour committed within the family. However, due to the "hands-off" approach traditionally assumed by law enforcement

agents and the judiciary in cases occurring within the private sphere, such laws have not been invoked to punish perpetrators of domestic violence. 79/

123. In addition, in many countries, both real and evidentiary obstacles exist in cases of domestic violence. As in many violent crimes, there are often no witnesses of domestic violence, except for the victim. Unlike violent crimes, however, intimacy remains a bond between victim and perpetrator and often there continues to be contact between the victim and perpetrator. Such contact, generally unwelcome by the victim, leaves women vulnerable to threats or pressure to withdraw their complaints. Despite the fact that the myth of a high level of complaint-withdrawal among victims of domestic violence has been proven to be false, the excuse is still commonly used to justify non-prosecution. 80/

A. Mandatory arrest

124. Some jurisdictions in Canada, Australia and the United States of America have adopted policies that require police and prosecutors to treat domestic violence cases in the same way as any other criminal matter, as a crime against the State, and to prosecute regardless of the victim's will. Although many advocates support such measures, contending that they appropriately shift responsibility for the violence from the victim to the State, some advocates warn that mandatory arrest and pro-charging policies are contrary to the victim's best interests and threaten to further weakening of her position by taking away control over the proceedings. 81/ Additionally, despite an increase in the number of arrests of batterers, mandatory arrest policies have also had the unintended consequence of leading to the arrests of victim-survivors. 82/

B. Protection orders

125. Perhaps the most widely utilized civil remedy for domestic violence is the protection or restraining order, which generally forbids abusers from having any contact with the victim-survivor, may exclude the abuser from the shared home, provide police a mechanism for arrest if further violence occurs and furnish women with protection in the absence of criminal sanctions. These orders, however, are often rendered ineffective if practical policy considerations are lacking. Policy considerations may include the definition of abuse (and whether it encompasses psychological and sexual violence), the definition of the requisite relationship between the victim and perpetrator (which is, in many cases, limited to husband-wife relationships) and the costs or legal expertise involved in acquiring a protection order which may serve to undermine the practicality of protection or restraining orders. 83/

C. Tort and delict

126. Tort and delict remedies that provide financial compensation for civil wrongs may also be available to victim-survivors of domestic violence. Victim-survivors of domestic violence, or families of the deceased, may not only pursue such civil causes of action against the perpetrators but also against law enforcement officials when they fail to provide adequate protection to individual victims. 84/ In many jurisdictions, where marital

relationships may exempt husbands from being sued by their wives either directly, or effectively through the woman's status as legal minor, a civil cause of action against the husband is an impossibility.

D. Divorce

127. Matrimonial relief or divorce provides a remedy for victim-survivors of domestic violence in cases in which a marital relationship exists. According to one researcher, marital law regimes can be broken down into three groups: general law based on a European model; customary law as a product of colonialism, where local leaders worked with colonial leaders to codify "custom"; and laws which are derived from religious texts. 85/ In many countries, general common law and other personal laws coexist, governing marriages differentially.

128. Although there is a general lack of uniformity even within each of these three marital law regimes, generalizations have been made regarding the availability of relief in cases of domestic violence. General common law systems allow for divorce when the fault of one of the parties for the breakdown in the marriage can be established; the marriage has irretrievably broken down and there is evidence of this breakdown; or the marriage has irretrievably broken down as demonstrated by the parties' testimony or by their physical separation for a specified period of time. Within customary law marital regimes, divorce is formally possible but strongly discouraged. 86/ In some marital law regimes based on religion, divorce is prohibited. While women may be able to divorce their husbands because of cruelty, marital law regimes based on Islam often greatly restrict a woman's ability to obtain a divorce. 87/

E. Specific domestic violence legislation

129. According to a report on domestic violence legislation submitted to the Special Rapporteur, 88/ it is argued that domestic violence legislation which specifically prohibits violence against women is by far the most effective legal mechanism to address the issue of domestic violence. Remedies under this type of legislation include protection from violence and threats of violence, safety and security for herself, her dependents and property and assistance in continuing her life without further disruption. The report, based on a survey of domestic violence legislation in 21 countries, suggests, inter alia, a framework for model legislation to serve as guidelines for countries hoping to enact legislation on domestic violence, (see addendum 2 to this report).

130. Although this has not always been the case, in recent times laws have been formulated with women victims of violence in mind. Often, laws were drafted and utilized to the detriment of women victims of violence. 89/ In one country, for example, women throughout the country are serving lengthy prison sentences for killing their abusers in self-defence. Conversely, men who kill their intimate partners are often excused or their sentences mitigated after the provocation defence or the defence of honour has been raised and accepted by the court. In southern African countries the three most commonly utilized and successful defences for domestic murder are

provocation, intoxication and insanity, all of which serve to excuse the crime or to reduce the perpetrator's culpability. 90/ Such laws clearly benefit the domestic murderer to the detriment of the victim.

131. In some countries, the crime of domestic violence is taken very seriously. Brazil was one of the first countries in Latin America to include an article on domestic violence in its Constitution. It provides that the family is the basis of society and will have the special protection of the State. The constitution assures assistance to each person in the family and provides that the State will create mechanisms to prohibit violence within familial relationships. 91/ Other countries with constitutional provisions on violence against women are Ethiopia and Viet Nam.

F. Community support services and domestic violence

132. Domestic violence and its effects extend beyond a mere criminal justice problem, so that the legal system is generally utilized as a last resort, only after other mechanisms have been exhausted or proved ineffective. Domestic violence is a health, legal, economic, educational, developmental and human rights problem. This is reflected in ways in which women attempt to deal with domestic violence. Women often seek assistance first from family, friends, religious confidants, nurses, doctors, social workers, counsellors, or women's organizations. 92/

133. For example, whilst numerous victim-survivors of domestic violence pass through the doors of hospital emergency rooms each day, hospital staff generally accept the victim-survivors accounts of clumsiness, whether it is falling down stairs or walking into doors, as explanations of the marks that cover their body. Without clear policy and reporting guidelines, doctors and hospital staff merely accept these unconvincing stories, treat the wounds and allow the victim-survivor to return to her violent home, without any questions asked, any attempt to offer help or any referrals to appropriate organizations. Although doctors report that they rarely have difficulty identifying victims of domestic violence, they also rarely have the time or resources to address their suspicions. In numerous countries, as in the case of the World Health Organization's classification guidelines, neither woman-battering nor domestic violence is treated as a distinct health problem.

134. Some hospitals have taken steps to remedy the failure of the medical community to address the needs of victim-survivors of domestic violence. Recognizing, for example, that a large number of victims of domestic violence were arriving at the doors of its emergency room, a hospital in Kuala Lumpur (Malaysia) instituted a comprehensive approach to domestic violence in the form of the "One-Stop Center". 93/ At the "One-Stop Center", victims of domestic violence are provided with a room for 24 hours, have access to on-site police personnel and lawyers and are provided with a copy of their police report free of charge.

135. As a matter of fact, the police have a potentially important role to play in combating domestic violence. Although they are particularly well positioned to provide assistance to victim-survivors of domestic violence, they are generally not well trained. Thus, this potentially easily accessible public service has been thwarted by inadequate training, inadequate laws,

stereotyping and ambiguity regarding its role in dealing with domestic violence. Studies have shown that, when called in domestic violence cases, police often try to mediate or counsel the couple rather than to treat the incident like a criminal matter. 94/ Additionally, prosecutors often refer domestic violence cases to civil rather than to criminal courts. In Malaysia, for example, 91 per cent of domestic violence cases reported to the police between 1990 and 1992 were referred by the police to a civil court. Since legal aid is not available to individuals pressing civil claims, the victim-survivors of domestic violence must hire their own lawyers and cover all expenses themselves, the costs of which prohibit many women from pursuing justice.

136. Classification of domestic violence as a criminal matter, however, does not guarantee it will be treated any more seriously. Of the 6.2 per cent of the cases that rose to the level of criminal assault in Malaysia between 1990 and 1992, a mere 0.5 per cent of the cases have been brought to court. 95/ In another country, although the injuries suffered by women at the hands of their abusers are as serious as injuries resulting in 90 per cent of violent felonies, domestic assaults are almost always classified as misdemeanours. 96/

137. Special women's police stations, generally staffed with multidisciplinary female teams equipped to meet the many needs of victims of violence against women, have proven effective in combating the traditional failings of the police in addressing domestic violence. Since the establishment of the first delegacia da mulher (women's precinct), a specialized unit that works exclusively with victims of domestic violence, in Sao Paulo (Brazil), in 1985, these units have now been set up throughout most of the states in Brazil. 97/ Brazil's success has encouraged the neighbouring countries of Colombia and Peru to institute their own versions of the specialized units. The delegacias provide comprehensive support to women including social, legal, psychological, housing, health and day-care services. Similar police stations have also been instituted in Malaysia, Spain and Pakistan.

138. There is no doubt that domestic violence raises serious safety issues for its victims. In order to adequately meet the needs of victim-survivors, funding must be allocated for the support or establishment of shelters for victims of violence. Shelters in many communities have been established out of an identified need to provide victims of domestic violence with a safe space and assistance as they attempt to leave their violent domestic situations. Such shelters are overwhelmingly private, non-profit, non-governmental organizations that sometimes receive financial support from Governments. In countries where there are little or no social services provided by Governments for victims of domestic violence, the utility of shelters has been called into question by some women's organizations, notably in the Latin American region. For example, the violence prevention programme Lugar de Mujer in Argentina took a political decision not to open a shelter, believing that it is the responsibility of the communities and Governments themselves to take steps to end the violence. 98/

139. While the importance of providing immediate safety to women in need of such protection is not denied, temporary shelters only address the consequence of domestic violence and thus, in isolation, they have only limited effect.

Laws that attempt to provide protection for victims without providing necessary support services or the funds for such services are incomplete. Such resources for domestic violence legislation should, however, not only be set aside for the implementation and enforcement of the law itself but also for services that support victim-survivors and those that work towards the eradication of domestic violence through strategies such as education, training and documentation.

VII. RECOMMENDATIONS

A. At the national level

140. States have an affirmative duty to protect the human rights of women and they must exercise due diligence to prevent violence against women. Because of the nature of violence against women, its prevalence, persistence and high incidence throughout the world, States must develop expansive strategies in order to fulfil their international obligations effectively.

141. If statistics illustrate that existing laws are ineffective in protecting women from violence, States must find other complementary mechanisms to prevent domestic violence. Thus, if education, dismantling of institutional violence, demystifying domestic violence, training of State personnel, the funding of shelters and other direct services for victim-survivors and the systematic documentation of all incidents of domestic violence are found to be effective tools in preventing domestic violence and protecting women's human rights, all become obligations in which the State must exercise due diligence in carrying out. The due diligence standard is not limited to legislation or criminalization.

142. The following are some strategies that should be incorporated into national initiatives against domestic violence and considerations that States should contemplate when taking steps to address domestic violence:

(a) States should ratify all international human rights instruments;

(b) States should withdraw their reservations, particularly those regarding the human rights of women, to all human rights instruments, particularly the Convention on the Elimination of All Forms of Discrimination against Women;

(c) States should comply with the reporting requirements of the various human rights instruments, and ensure the inclusion of gender-specific information as it pertains to all such instruments;

(d) States should enact legislation on domestic violence along the lines of the guidelines set out in addendum 2 to this report;

(e) States should establish special units or procedures in hospitals to help identify women victims of violence and to provide them with counselling;

(f) States should define the powers of the police regarding violence against women in written policy and provide training to all police, both veterans and new recruits, in line with such powers, bearing in mind that the

police create an important link between the State and victim-survivors, as they are often the first State agency to have contact with the victim-survivor;

(g) Recognizing that women and girl children often do not report the violence that is perpetrated against them because they do not understand that they are victims of, rather than participants in, the violence, States should undertake legal literacy campaigns to inform women of their legal rights and educate them specifically about domestic violence;

(h) Accepting that family laws serve to legitimize certain family forms, as well as certain roles within the family, States should ensure that such laws are just and that they provide for the equal protection of women, men and children within the family. Both women and men, for example, must have the same opportunity to initiate divorce. Additionally, States should systematize family and personal laws and laws relating to violence against women;

(i) Recognizing that economic deprivation and isolation are often significant aspects of woman-battering, States should ensure women's economic empowerment through equal remuneration for equal work and increased job opportunities for women, as well as equal rights to property, inheritance and family income;

(j) Accepting that there are serious safety issues that arise from domestic violence, States should provide a mechanism through which victim-survivors can invoke State protection to enforce their desire to separate, and rigorously enforce such mechanisms as protection orders. Additionally, provisions should provide for the removal of the abuser from the shared home and allow the victim-survivor to retain her present housing, at least until formal and final separation is achieved;

(k) In cases of domestic violence, women should be granted full custody of the children. In cases of woman-battering, the batterer should not be granted visitation rights so that they may be protected from abuse and from being used as leverage. In cases in which visitation rights are granted, visitation should be supervised and arranged in a way so as not to cause the woman any contact with the batterer. Details such as transportation, the site of the visitations, financial support for the visits and the persons authorized to supervise the visits should all be included in the court decree. In cases where domestic violence against a pregnant woman or her unborn foetus has occurred, there should be legal mechanisms to grant custody to the mother prior to the birth of the baby;

(l) In order to protect their safety, women should be allowed to leave the State or country regardless of whether they have children. The State must not punish the woman for taking such steps to ensure her own or her children's safety in cases when the State has failed to provide adequate protection. If she is arrested or if custody is granted to her former husband in retaliation for her flight from his home State or country, the State directly places the woman and children at increased risk;

(m) Recognizing the nexus between domestic violence and homelessness, priority should be given to victim-survivors of domestic violence in State-sponsored housing;

(n) Various State organs, including the police, prosecutors and social workers, should conduct coordinated outreach efforts in various marginalized communities where there are problems of domestic violence;

(o) Refugee and asylum laws should be broadened to include gender-based claims of persecution, including domestic violence;

(p) It is the State's duty to foster cooperative relationships between State organs and non-governmental organizations. The State must institute initiatives that encourage individuals and organizations working on issues of domestic violence to contribute to the official initiatives of the State. The State must also seek to identify ways in which it can assist non-governmental organizations working on issues of domestic violence;

(q) In order to evaluate the efficacy of new laws and policies, up-to-date statistical data should be collected and recorded in a public forum. Additionally, policies regarding the classification by the police of crimes of domestic violence which document the relationship between the perpetrator and victim should be instituted;

(r) States with a high level of son preference must reform all laws, practices, policies and procedures that sanction the practice. Additionally, States must institute laws that prohibit violence consistent with son preference;

(s) Official policies of the State that affect, restrict or influence individuals in the family sphere should be easily accessible to all citizens in written form. Additionally, there must be mechanisms to which individuals can lodge formal complaints and through which the State will investigate such complaints against State actors who violate State policies.

(t) States should adopt legislation which makes female genital mutilation a crime and implement education programmes to prevent the practice, which is one of the most pernicious forms of violence committed against women;

(u) States should, with due diligence, prevent, prosecute and punish perpetrators of incest in any given society;

(v) States should introduce legislation which recognizes marital rape as a crime;

(w) States should ratify and comply with the ILO conventions on the rights of migrant workers so as to reduce violence against women migrant workers. Furthermore, States must take an active stance against the abuse of migrant workers' rights, including the right of preview of contract, a minimum wage, payment of cash at regular intervals, maximum hours of work and holidays with pay, and social security/welfare benefits at least equal to those of the nationals of the country.

B. At the international level

143. The international community should adopt and ratify an optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women which would allow women the right to seek redress for the violation of their human rights.

144. The international community should consider the possibility of adopting an international convention on the elimination of violence against women. There does not at present exist a comprehensive international legally binding instrument on violence against women, and the position of the Special Rapporteur is only an ad hoc mechanism with no avenue for redress.

145. In accordance with Commission resolutions 1994/45 and 1995/86 on the question of integrating the rights of women into the human rights mechanism of the United Nations and the elimination of violence against women, ways in which the Commission on Human Rights and the Commission on the Status of Women can, both individually and jointly, further promote the aims of these resolutions should be identified, including strategies for further incorporating the human rights of women into all mechanisms of the United Nations.

146. Increasingly, non-governmental organizations have been supplying gender-specific information to various country and thematic mechanisms of the Commission on Human Rights. The Commission should examine the reports of these bodies, with a view to assessing the response to and inclusion of this and other gender-specific information into their work.

147. Violence against women is an extremely broad mandate for one special rapporteur. In fact, it is unnecessarily broad due to the existence of other rapporteurs whose mandates overlap with that of the Special Rapporteur on violence against women. If the mandates of other thematic and country rapporteurs of the Commission and its Sub-Commission were more clearly defined to cover expanding definitions of what constitutes certain human rights violations, the Special Rapporteur on violence against women would be able to carry out her work more effectively. Thus, both the Commission and the Sub-Commission should expand the mandates of those thematic mechanisms that currently lack specificity regarding violence against women.

148. The United Nations must allocate resources to human rights bodies and mechanisms to specifically address violations of the human rights of women.

149. Adequate resources should be channelled to the Centre for Human Rights to ensure that the work of the Special Rapporteur on violence against women is not compromised for administrative reasons.

Notes

1/ The Special Rapporteur would like to thank Lisa Kois for her working paper on domestic violence; Dorothy Q. Thomas and Binaifer Nowrojce for their working paper on domestic violence as a human rights violation; Rhonda Copelon for her note on torture; Rosanna Favero for her working paper on violence in

Latin America and Katy Grant for her working paper on marital rape and incest. The Special Rapporteur also thanks the International Women, Law and Development, Sakuntala Rajasingham and Marge Schuler for their work on the model legislation on domestic violence.

2/ Michele Ingrassia et al., "Patterns of Abuse", Newsweek, 4 July 1994.

3/ See, for example, Jane Francis Connors, Violence against Women in the Family (ST/CSDHA/2), United Nations, New York, 1989. Although Connors assumes an expansive definition of family violence, including cohabiting couples as well as married couples who are living apart, she restricts her definition to "violence perpetrated by a man upon a woman in the domestic sphere", thereby excluding lesbian women's experience with violence.

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Annex

CONFIDENTIAL

VIOLENCE AGAINST WOMEN

INFORMATION FORM

INFORMER:

Name of person/organization: _____

Address: _____

Fax/Tel/e-mail: _____

VICTIM(S):

Name: _____

Address: _____

Date of birth: _____

Nationality: _____

Sex: female _____

Occupation: _____

Ethnic background (if relevant): _____

Marital status: _____

CONFIDENTIAL

THE INCIDENT

Date: _____ Time: _____

Location/country: _____

Number of assailants: _____

Are the assailant(s) known to the victim? _____

_____

Description of the assailant(s) (include any identifiable features): _____

_____

Description of the incident: _____

_____

_____

_____

_____

Does the victim believe she was specifically targeted because of gender? _____

If yes, why? _____

_____

_____

Has the incident been reported to the relevant State authorities? _____

If so, which authorities and when? _____

_____

Actions taken by the authorities after the incident: _____

_____

_____

WITNESSES:

Were there any witnesses? _____

_____

Name/age/relationship/contact address: _____

_____

_____

PLEASE RETURN TO THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN, CENTRE FOR HUMAN RIGHTS, UNITED NATIONS, 1211 GENEVA 10, SWITZERLAND, (FAX: (41.22)917.02.12)